

ATTORNEY DOCKET NO. 02200-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: COLWELL, Betsy P.
 Serial No: 09/816,016
 Filed: March 23, 2001
 For: SELECTIVE BIRD FEEDER
 Examiner: Griles, Bethany L.
 Art Unit: 3643

02 NOV 14 AM 10:31
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*PCT Action
w/ PTO
11/14/02
BLW*

CERTIFICATE OF FACSIMILE

The undersigned hereby certifies that this document is being forwarded via facsimile to Examiner Peter Poon, Commissioner for Patents, Washington, D.C. 20231 at fax number (703) 305-0285, on the 14th day of November, 2002.

Marie LoPresti
 Certifier

Office of Petitions
 Commissioner for Patents
 Washington, D.C. 20231

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PETITION FOR WITHDRAWAL OF
NOTICE OF ABANDONMENT

GROUP 3600

Sir:

In response to the Notice of Abandonment mailed on November 4, 2002, Applicants respectfully request reconsideration.

RESPONSE

1. Applicants received an Office Action that was mailed April 18, 2002 in connection with the above-referenced matter (copy of first sheet enclosed as Exhibit "A").

2. A Response to the outstanding Office Action was filed on October 18, 2002 (Exhibit "B").

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**Art Unit: 3643
Serial No: 09/816,016****GROUP 3600**

3. The Response of October 18, 2002 was filed along with:
an Amendment Transmittal (Exhibit "C");
a Certificate of Mailing (Exhibit "D");
Check no.26620 for \$460.00 in payment of the extension fee (Exhibit "E"); and
an Acknowledgment Postcard (Exhibit "F").
4. The Acknowledgment Postcard was received by this office on October 28, 2002.
The Acknowledgment Postcard had been stamped "Oct. 24, 2002" by the U.S. Patent and
Trademark Office (Exhibit "G").
5. Check no. 26620 was stamped by First Virginia Bank on October 28, 2002 (Exhibit
"H").
6. On November 7, 2002, this office received a Notice of Abandonment dated
November 4, 2002 (Exhibit "I").
7. Applicant states that the filing of the Response was complete as evidenced by the
attached documentation.
8. Accordingly, Applicants request that the U.S. Patent and Trademark Office withdraw
the Notice of Abandonment for failure to timely file a proper reply to the Office letter mailed on
November 4, 2002.
9. Because this error is not the fault of the Applicants, no Petition Fee is enclosed. If
the U.S. Patent and Trademark Office determines that a fee is required, the PTO is authorized to

Art Unit: 3643
Serial No: 09/816,016

charge any additional fees incurred as a result of the filing hereof or credit any overpayment to our account #19-0120.

CONCLUSION

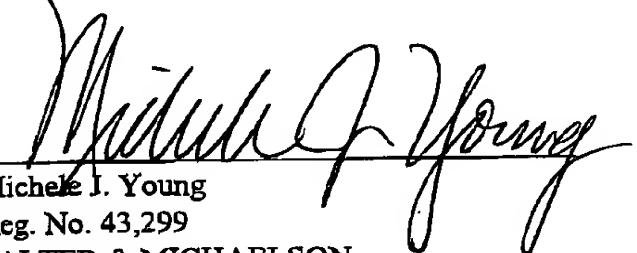
The U.S. Patent and Trademark Office is authorized to charge any additional fees incurred as a result of the filing hereof or credit any overpayment to our deposit account #19-0120.

Respectfully submitted,
CQLWELL, Betsy P.

Date: November 14, 2002

By:

Michele J. Young
Reg. No. 43,299
SALTER & MICHAELSON
321 South Main Street
Providence, Rhode Island 02903
Telephone: 401/421-3141
Facsimile: 401/861-1953
Customer No. 000987



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EXHIBIT I



UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,016	03/23/2001	Betsy P. Colwell	02200-1	9104

7590 11/04/2002

Michele J. Young
Salter & Michaelson
321 South Main Street
Providence, RI 02903

EXAMINER

GRILES, BETHANY L

ART UNIT	PAPER NUMBER
3643	

DATE MAILED: 11/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO ACKNOWLEDGES RECEIPT:
Response to Office Action

Applicant: COLWELL, Betsy P
 Serial No.: 09/816,016
 Filed: March 23, 2001
 Title: SELECTIVE BIRD FEEDER
 Art Unit: 3643
 Examiner: Griles, Bethany L.

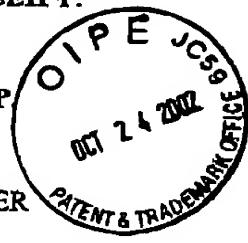


EXHIBIT G

Enclosed: Certificate of Mailing (1 pg.); Amendment Transmittal (3 pgs.); Response to Office Action (10 pgs.); and check for \$460.00.

MJY:rml / Docket No. 02200-1
 Mailed: October 18, 2002

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 321 South Main Street
 The Heritage Building
 Providence, RI 02903

OCT 24 2002

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EXHIBIT F

PTO ACKNOWLEDGES RECEIPT:
Response to Office Action

Applicant: COLWELL, Betsy P.
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 Filed: March 23, 2001
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6.2 ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPAINTED BORDER - SEE REVERSE SIDE FOR COMPLETE SECURITY FEATURES

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 PROVIDENCE, RHODE ISLAND, 02903-7128

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26620

57-12/115

10/18/02

PAY TO THE ORDER OF **Commissioner of Patents and Trademarks**

\$ 460.00

Four Hundred Sixty and 00/100

DOLLARS

Commissioner of Patents and Trademarks
 Washington, DC 20231

MEMO: 09/816,016 Colwell, Betsy P #02200-1

Susan A. Sweeney
 AUTHORIZED SIGNATURE

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SALTER & MICHAELSON
 Commissioner of Patents and Trademarks

26620

10/18/02

460.00

Practitioner's Docket No. 02200-1

PATENT**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Colwell, Betsy P.
Application No.: 09/816,016
Filed: 03/23/2001
For: SELECTIVE BIRD FEEDER

Group No.: 3643
Examiner: Griles, Bethany

Box Amendment - Fee
Commissioner for Patents
Washington, D.C. 20231

CERTIFICATE OF MAILING UNDER 37 C.F.R. section 1.8(a)

I hereby certify that the attached correspondence comprising:

Amendment Transmittal (3 pgs.);
Response to Office Action (10 pgs.);
Check for \$460.00; and
Acknowledgment Postcard.

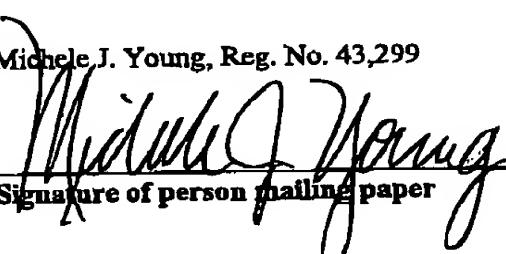
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Washington, D.C. 20231

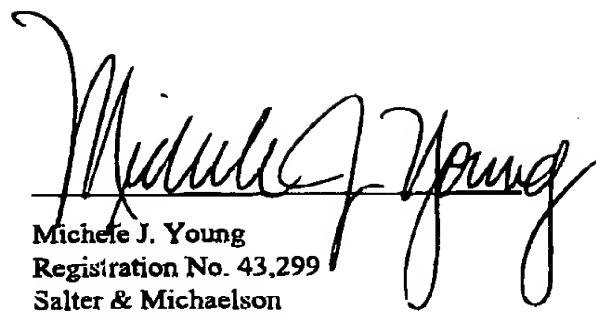
on Oct. 18, 2002.

Michele J. Young, Reg. No. 43,299


Signature of person mailing paper

Art Unit: 3643
Serial No.: 09/816,016

Date: October 18, 2002



Michele J. Young
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Salter & Michaelson
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Providence, RI 02903
US
Tel: 401-421-3141
Fax: 401-861-1953
Customer No. 000987

Art Unit: 3643
Serial No.: 09/816,016

FEE FOR CLAIMS

4. The fee for claims (37 C.F.R. 1.16(b)-(d)) has been calculated as shown below:

(Col. 1)	(Col. 2)	(Col. 3) SMALL ENTITY
Claims Remaining After Amendment	Highest No. Previously Paid For	Present Extra Rate
Total 38	Minus 32	= 6 x \$9 = \$ 54.00
Indep. 3	Minus 3	= 0 x \$42 = \$ 00.00
First Presentation of Multiple Dependent Claim		+ \$135 = \$ 00.00
		Total Addit. Fee \$ 54.00

Total additional fee for claims required is \$ 54.00.

FEE AUTHORIZATION

5. The U.S. Patent and Trademark Office is authorized to charge the amount of \$ 54.00 for additional claims to Account No. 19-0120.

FEE PAYMENT

- 6 Attached is a check in the sum of \$460.00 in payment of the extension fees.

FEE DEFICIENCY

- 7 If any additional extension and/or fee is required, charge Account No. 19-0120.
If any additional fee for claims is required, charge Account No. 19-0120.

Practitioner's Docket No. 02200-1

PATENT**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Colwell, Betsy P.
 Application No.: 09/816,016
 Griles, Bethany
 For: SELECTIVE BIRD FEEDER

Group No.: 3643 Filed: 03/23/2001

Examiner:

Box Amendment - Fee
Commissioner for Patents
Washington, D.C. 20231

AMENDMENT TRANSMITTAL

- Transmitted herewith is an amendment for this application.

STATUS

- Applicant is a small entity. A statement was already filed.

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EXTENSION OF TIME

- The proceedings herein are for a patent application and the provisions of 37 C.F.R. 1.136 apply. Applicant petitions for an extension of time under 37 C.F.R. 1.136 (fees: 37 C.F.R. 1.17(a)(1)-(4)) for three months:

Fee: \$460.00

CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. 1.8(a))

I hereby certify that, on the date shown below, this correspondence is being:

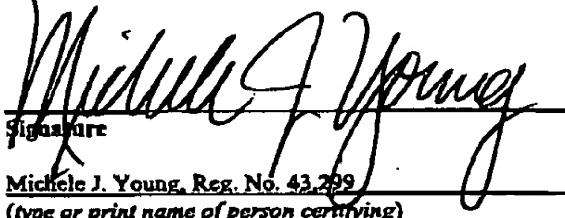
MAILING

- deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

Date: October 18, 2002

FACSIMILE

transmitted by facsimile to the Patent and Trademark Office.


 Michele J. Young, Reg. No. 43,299
 (type or print name of person certifying)

(Amendment Transmittal--page 1 of 3)

Art Unit: 3643

Serial No: 09/816,016

a dome-shaped removable top in direct contact with the seed holder [and] , the removable top being detached from and supported by the at least one sidewall of the selective housing, the removable top including an aperture through which a portion of the seed holder extends; the seed holder further including a cap spaced apart from the removable top, and further including a hanger attached to the cap.

Art Unit: 3643
Serial No: 09/816,016

13. (Amended Once) The selective bird feeder of claim [6] 1, wherein the top of the selective housing includes apertures.

26. (Amended Once) The selective bird feeder of claim [1] 21, further comprising a hanger attached to the seed holder, wherein the [seed holder] hanger extends through the top.

27. (Amended Once) A selective bird feeder, comprising:

a selective housing having a cylindrical sidewall and including apertures having a width ranging from about 1.3 inches to about 1.7 inches;

a removable top detached from and supported at least on the cylindrical sidewall of the selective housing;

a cylindrical seed holder contained within and spaced apart from the cylindrical sidewall of the selective housing; and

a hanger attached to the selective bird feeder;

wherein the removable top is in direct contact with the cylindrical seed holder and the sidewall of the selective housing.

32. (Amended Once) A selective bird feeder, comprising:

a selective housing having at least one sidewall and a base, the at least one sidewall of the selective housing including a plurality of apertures;

a seed holder at least partially contained within the selective housing and supported by the base of the selective housing;

a space disposed between a sidewall of the seed holder and the at least one sidewall of the selective housing;

Art Unit: 3643
Serial No: 09/816,016

Version with marking to show changes to claims

1.(Amended Once) A selective bird feeder, comprising:
a selective housing having at least one sidewall and a base;
a seed holder contained within the selective housing and including a base;
a fastening member constructed and arranged to removably secure the base of the
selective housing to the base of the seed holder;
a [removable] top [supported by the at least one sidewall of the selective housing; and a
seed holder contained within the selective housing] adjacent an upper edge of the selective
housing;

wherein, upon removal of the fastening member, the selective housing and the base of the
selective housing are disconnected from the seed holder such that a user can remove the selective
housing and the base of the selective housing from engagement with the base of the seed holder.

7. (Amended Once) The selective bird feeder of claim [6]1, wherein the base of the
selective housing is substantially solid.

8. (Amended Once) The selective bird feeder of claim [6] 1, wherein the base of the
selective housing includes apertures.

12. (Amended Once) The selective bird feeder of claim [6] 1, wherein the top of the
selective housing is substantially solid.

Art Unit: 3643
Serial No: 09/816,016

CONCLUSION

In view of the foregoing amendments and remarks, the Applicant respectfully submits that all of the claims pending in the above-identified application are in condition for allowance, and a notice to that effect is earnestly solicited.

If the present application is found by the Examiner not to be in condition for allowance, then the Applicant hereby requests a telephone or personal interview to facilitate the resolution of any remaining matters. Applicant's attorney may be contacted by telephone at the number indicated below to schedule such an interview.

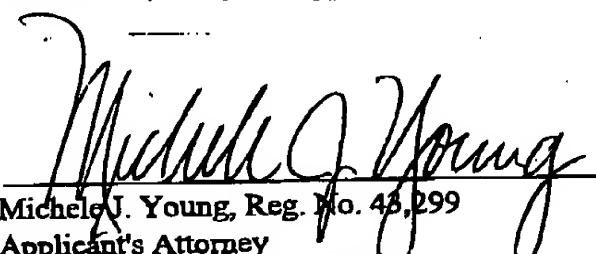
The U.S. Patent and Trademark Office is authorized to charge any additional fees incurred as a result of the filing hereof or credit any overpayment to our deposit account #19-0120.

Respectfully submitted,
COLWELL, Betsy P., Applicant

Dated: October 18, 2002

By:

Michele J. Young, Reg. No. 43,299
Applicant's Attorney
SALTER & MICHAELSON
321 South Main Street
Providence, Rhode Island 02903
Telephone: 401/421-3141
Facsimile: 401/861-1953
Customer No. 000987



Art Unit: 3643

Serial No: 09/816,016

In contrast, the top of the present bird feeder is not connected to the sidewall - it is adjacent an upper edge of the sidewall (or cage). The present feeder also includes a fastening member that is constructed and arranged to removably secure the base of the selective housing to the base of the seed holder. When the fastening member is removed, the selective housing and the base of the selective housing are disconnected from the seed holder. This allows a user to remove the selective housing and the base of the selective housing from engagement with the base of the seed holder. When the selective housing and base of the selective housing are removed, the interior of the selective housing easily may be cleaned, as well as the exterior of the seed holder and underside of the top. This is not disclosed, taught, or suggested by the Duncraft feeder.

In addition, the removable top (or cover) of the present feeder has an extremely smooth and slippery surface, and in some embodiments, has an arcuate or "domed" shape with a pronounced downward slope. Such a construction prevents squirrels from supporting themselves on the top, which minimizes or prevents squirrels from being able to sit on the top or to open the cap of the seed holder in order to access the seed contained therein. The squirrels also cannot perch on the cover and detract desirable birds from approaching the feeder.

Because each and every element of independent claims 1, 27, and 32 are not disclosed in the cited reference, the claims are not anticipated. The claims depending therefrom are allowable for at least the same reasons. Withdrawal of the rejection is respectfully requested.

The foregoing features also are not taught or suggested by the Duncraft reference, and there is no motivation to modify the Duncraft reference in order to obtain the presently claimed invention other than through hindsight recognition.

Art Unit: 3643
Serial No: 09/816,016

REMARKS

Claims 1-32 were examined. By present amendment, claims 6 and 24 were canceled; claims 33-40 were added; and claims 1, 7, 8, 12, 13, 26, 27 and 32 were amended to more particularly point out and distinctly claim the subject matter that the Applicant regards as the invention. Thus, after entry of this Amendment, claims 1-5, 7-23, and 25-40 will be pending in the application.

Rejections under 35 U.S.C. §102(b)

Claims 1-32 were rejected under 35 U.S.C. §102(b) based upon public use or sale of the Duncraft Metal Haven Wild Bird Feeder, which the Patent Office stated was disclosed in the electronic catalog found at www.birdsforever.com/dunfeed. Applicant confirmed with the Patent Office by telephone that the Duncraft Metal Haven Wild Bird Feeder (Duncraft Feeder) is the same as the one found on page 16 of the Duncraft catalog that was cited in the IDS filed by the Applicant.

The Duncraft feeder includes a cover and a base, both of which are connected to the cage by a plurality of fasteners. Thus, removal of the cage and base or cover cannot be accomplished without cutting or permanently damaging the fasteners, and possibly the base or cover as well. This, of course, will damage the integrity of the structure. If the cage and base or cover cannot be removed from the feeder, it is difficult if not impossible to clean the interior of the cage and/or seed holder, which is desirable to do periodically in order to prevent mold, etc.

In addition, the cover of the Duncraft feeder includes several circular indentations or ribs that can easily be grasped by squirrels, allowing them to support themselves on the cover. If the squirrels are able to support themselves on the cover, they then will have easy access to the seed tube cap, which they can remove, allowing them easy access to the seed contained in the tube and also deterring desirable birds from approaching the feeder. Assuming, for the sake of argument, that the Duncraft seed tube includes a fastener, removing the fastener will not allow the cage to be removed without cutting the plurality of fasteners attaching the cage to the base.

Art Unit: 3643
Serial No: 09/816,016

- 33. (New) The selective bird feeder of claim 1, further comprising a hanger attached to the seed holder.
- 34. (New) The selective bird feeder of claim 33, wherein the top further includes an aperture sized and dimensioned to receive the hanger therethrough.
- 35. (New) The selective bird feeder of claim 34, wherein the aperture is sized and dimensioned to receive the seed holder therethrough.
- 36. (New) The selective bird feeder of claim 1, further comprising a clamp disposed about the seed holder above the removable top.
- 37. (New) The selective bird feeder of claim 27, further comprising a clamp disposed about the seed holder above the top.
- 38. (New) The selective bird feeder of claim 32, further comprising a clamp disposed about the seed holder above the top.
- 39. (New) The selective bird feeder of claim 36, wherein the top is substantially dome-shaped, and the outer edge of the top extends below the upper edge of the selective housing.
- 40. (New) The selective bird feeder of claim 1, wherein the top is a substantially transparent plastic material.—

Art Unit: 3643

Serial No: 09/816,016

27. (Amended Once) A selective bird feeder, comprising:

a selective housing having a cylindrical sidewall and including apertures having a width ranging from about 1.3 inches to about 1.7 inches;

a removable top detached from and supported at least on the cylindrical sidewall of the selective housing;

a cylindrical seed holder contained within and spaced apart from the cylindrical sidewall of the selective housing; and

a hanger attached to the selective bird feeder;

wherein the removable top is in direct contact with the cylindrical seed holder and the sidewall of the selective housing.

32. (Amended Once) A selective bird feeder, comprising:

a selective housing having at least one sidewall and a base, the at least one sidewall of the selective housing including a plurality of apertures;

a seed holder at least partially contained within the selective housing and supported by the base of the selective housing;

a space disposed between a sidewall of the seed holder and the at least one sidewall of the selective housing;

a dome-shaped removable top in direct contact with the seed holder, the removable top being detached from and supported by the at least one sidewall of the selective housing, the removable top including an aperture through which a portion of the seed holder extends;

the seed holder further including a cap spaced apart from the removable top, and further including a hanger attached to the cap.

Please add the following new claims:

Art Unit: 3643
Serial No: 09/816,016

1. (Amended Once) A selective bird feeder, comprising:
 a selective housing having at least one sidewall and a base;
 a seed holder contained within the selective housing and including a base;
 a fastening member constructed and arranged to removably secure the base of the selective housing to the base of the seed holder;
 a top adjacent an upper edge of the selective housing;
 wherein, upon removal of the fastening member, the selective housing and the base of the selective housing are disconnected from the seed holder such that a user can remove the selective housing and the base of the selective housing from engagement with the base of the seed holder.
7. (Amended Once) The selective bird feeder of claim 1, wherein the base of the selective housing is substantially solid.
8. (Amended Once) The selective bird feeder of claim 1, wherein the base of the selective housing includes apertures.
12. (Amended Once) The selective bird feeder of claim 1, wherein the top of the selective housing is substantially solid.
13. (Amended Once) The selective bird feeder of claim 1, wherein the top of the selective housing includes apertures.
26. (Amended Once) The selective bird feeder of claim 21, further comprising a hanger attached to the seed holder, wherein the hanger extends through the top.

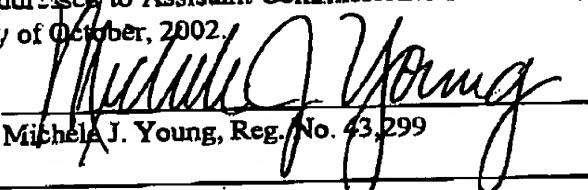
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: COLWELL, Betsy P.
Serial No: 09/816,016
Filed: March 23, 2001
For: SELECTIVE BIRD FEEDER
Examiner: Griles, Bethany L.
Art Unit: 3643

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8(a)

The undersigned hereby certifies that this document is being placed in the United States mail with first-class postage attached, addressed to Assistant Commissioner for Patents, Washington, D.C. 20231, on the 18th day of October, 2002.


Michelle J. Young, Reg. No. 43,299

Box Amendment - Fee
Commissioner for Patents
Washington, D.C. 20231

RESPONSE UNDER 37 C.F.R. § 1.111

Sir/Madam:

In response to the Official Action mailed on April 18, 2002, as extended, Applicant respectfully requests reconsideration.

AMENDMENT

Please amend the above-identified application as follows:

In the claims:

Please cancel claims 6 and 24 without prejudice or disclaimer.

Please rewrite the claims as follows:



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
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 Washington, D.C. 20231
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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7590 04/18/2002

Michele J. Young
 Salter & Michaelson
 321 South Main Street
 Providence, RI 02903

EXAMINER

GRILES, BETHANY L

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 04/18/2002

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UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Michele J. Young
 Salter & Michaelson
 321 South Main Street
 Providence, RI 02903

EXAMINER

GRILES, BETHANY L

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 04/18/2002

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Art Unit: 3643
Serial No: 09/816,016

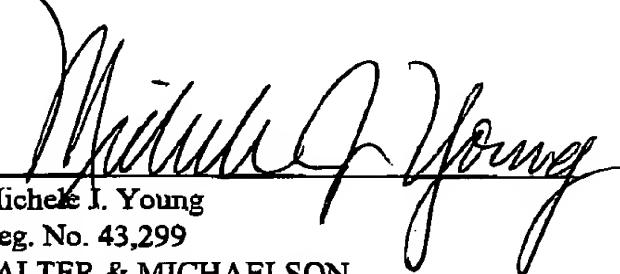
charge any additional fees incurred as a result of the filing hereof or credit any overpayment to our account #19-0120.

CONCLUSION

The U.S. Patent and Trademark Office is authorized to charge any additional fees incurred as a result of the filing hereof or credit any overpayment to our deposit account #19-0120.

Respectfully submitted,
CQL WELL, Betsy P.

Date: November 14, 2002

By: 

Michele J. Young
Reg. No. 43,299
SALTER & MICHAELSON
321 South Main Street
Providence, Rhode Island 02903
Telephone: 401/421-3141
Facsimile: 401/861-1953
Customer No. 000987

F:\Data\Maria LoPresti\PETITION\Coiwell 02200-1 pet - notice of abandonment.wpd

Art Unit: 3643
Serial No: 09/816,016

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Applicant:
Serial No:
Filed:
For:
Examiner:
Art Unit:

COLWELL, Betsy P.
09/816,016
March 23, 2001
SELECTIVE BIRD FEEDER
Griles, Bethany L.
3643

The undersigned hereby certifies that this document is being forwarded via facsimile to
Examiner Peter Poon, Commissioner for Patents, Washington, D.C. 20231 at fax number
(703) 305-0285, on the 14th day of November, 2002.

Certified

Jane Li Poon

PETITION FOR WITHDRAWAL OF
NOTICE OF ABANDONMENT

In response to the Notice of Abandonment made on ~~November~~ 4, 2002, Applicants
fully request reconsideration.

RESPONSE

Applicants received an Office Action that mailed April 18, 2002 in connection
above-referenced matter (copy of first sheet ed as Exhibit "A").

A Response to the outstanding Office was filed on October 18, 2002
B".

LAW OFFICES

SALTER & MICHAELSON

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321 SOUTH MAIN STREET

PROVIDENCE, RHODE ISLAND 02903-7128

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ROBERT S. SALTER*

MICHELE J. YOUNG*

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Deliver to : EXAMINER PETER M. POON
 : U.S. Patent and Trademark Office
Fax number : (703) 305-0285
From : MICHELE J. YOUNG
Fax number : (401) 861-1953
Date : NOVEMBER 14, 2002
Total pages (including cover sheet): 23
Operator : ml

Re: U.S. Patent Application Serial No. 09/816,016

Title: SELECTIVE BIRD FEEDER

Inventors: COLWELL, Betsy P.

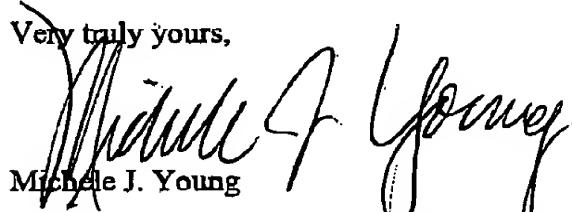
Our Ref: 02200-1

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Dear Examiner Poon:

Further to a recent conversation, attached please find a Petition for Withdrawal of Notice of Abandonment in connection with the above-referenced patent application. Please feel free to call me if you have any questions.

Very truly yours,



Michele J. Young

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